SUPREME COURT OF VICTORIA

COURT OF APPEAL

S APCR 2018 0035

JOSHUA BUOVAC — Applicant

v

THE QUEEN — Respondent

JUDGES:	KYROU and ASHLEY JJA
WHERE HELD:	MELBOURNE
DATE OF HEARING:	29 October 2018
DATE OF JUDGMENT:	16 November 2018
MEDIUM NEUTRAL CITATION:	[2018] VSCA 302
JUDGMENT APPEALED FROM:	*DPP v [Buovac]* [2018] VCC 47 (Judge Mullaly)

CRIMINAL LAW – Appeal – Sentence – Total effective sentence of 4 years, 6 months' imprisonment for multiple offences including 15 burglary offences, 15 theft offences and 2 theft of firearm offences – 2 years, 4 months aggregate sentence for 1 burglary, 1 theft, 1 theft of firearm offence, 1 prohibited person possess firearm offence – Co-offender sentenced to aggregate sentence of 7 days' imprisonment and community correction order of 2 years for first 3 of those offences – Applicant had relevant criminal history whereas co-offender did not – Applicant serving community correction order at time of offending – Greater cooperation with authorities by co-offender – Whether parity principle infringed – Leave to appeal refused.

APPEARANCES:	Counsel	Solicitors
For the Applicant	Mr C K Wareham	Valos Black & Associates
For the Respondent	Mr J B B Lewis	Mr J Cain, Solicitor for Public Prosecutions

KYROU JA
ASHLEY JA:

Introduction and summary

1 Between 12 April and 16 June 2017, the applicant 'engaged in a criminal spree of burglaries, thefts, dangerous driving and other dishonest behaviour'.[1] He pleaded guilty to 41 indictable offences and 19 related summary offences. On 5 February 2018, he was sentenced by a County Court judge as follows:

Charge	Offence	Maximum	Sentence	Cumulation
1	Burglary[2]	10 years	2 years, 4 months, aggregate	Base
2	Theft[3]	10 years		
3	Theft of a firearm[4]	15 years		
4	Prohibited person possess firearm[5]	10 years		
5	Burglary	10 years	2 years, 3 months, aggregate	1 year, 4 months
6	Theft	10 years		
8	Burglary	10 years		
9	Theft	10 years		
10	Burglary	10 years		
11	Theft	10 years		
12	Attempted theft[6]	5 years		
13	Burglary	10 years		
14	Obtain property by deception[7]	10 years		
18	Attempted burglary	5 years		
19	Theft	10 years		
21	Theft	10 years		
22	Burglary	10 years		
23	Theft	10 years		
24	Burglary	10 years		
25	Theft	10 years		
26	Burglary	10 years		
27	Theft	10 years		
28	Burglary	10 years		
29	Theft	10 years		
30	Burglary	10 years		
31	Theft	10 years		
33	Burglary	10 years		

1 *DPP v [Buovac]* [2018] VCC 47 [2] ('Sentencing remarks').

2 *Crimes Act 1958* s 76(1).

3 *Crimes Act* s 74(1).

4 *Crimes Act* s 74AA(1).

5 *Firearms Act 1966* s 5(1).

6 *Crimes Act* s 74(1), 321M.

7 *Crimes Act* s 81(1).

34	Theft	10 years		
35	Burglary	10 years		
36	Theft	10 years		
37	Burglary	10 years		
39	Burglary	10 years		
40	Theft	10 years		
32	Possess drug of dependence (methylamphetamine)[8]	1 year		
38	Possess drug of dependence (methylamphetamine)	1 year		
7	Dangerous driving while pursued by police[9]	3 years	1 year, aggregate	4 months
41	Dangerous driving while pursued by police	3 years		
15	Theft	10 years	2 years, aggregate	6 months
16	Theft of a firearm	15 years		
17	Prohibited person possess firearm	10 years		
20	Burglary	10 years		
Summary offence	**Offence**	**Maximum**	**Sentence**	**Cumulation**
6	Commit indictable offence while on bail[10]	3 months	1 month, aggregate	_
7	Contravene conduct condition of bail[11]	3 months		
8	Drive while disqualified[12]	2 years	6 months, aggregate	_
12	Drive while disqualified	2 years		
40	Drive while disqualified	2 years		
46	Drive while disqualified	2 years		
59	Drive while disqualified	2 years		
11	Go equipped to steal/cheat[13]	2 years	4 months, aggregate	
22	Go equipped to steal/cheat	2 years		
33	Go equipped to steal/cheat	2 years		
36	Go equipped to steal/cheat	2 years		
39	Go equipped to steal/cheat	2 years		
45	Go equipped to steal/cheat	2 years		
52	Go equipped to steal/cheat	2 years		
58	Go equipped to steal/cheat	2 years		
56	Use unregistered motor vehicle on highway[14]	50 penalty units[15]	$100 fine	N/A
63	Deal with property suspected of being proceeds of crime[16]	2 years	1 month, aggregate	_

8 *Drugs, Poisons and Controlled Substances Act 1981* s 73(1).

9 *Crimes Act* s 319AA(1).

10 *Bail Act 1977* s 30B.

11 *Bail Act* s 30A.

12 *Road Safety Act 1986* s 30(1).

13 *Crimes Act* s 91(1)

14 *Road Safety Act* s 71(1)(a).

15 For a second or subsequent offence: see *Road Safety Act* s 73(a)(ii).

64	Deal with property suspected of being proceeds of crime	2 years		
65	Use drug of dependence (methylamphetamine)[17]	1 year	$100 fine	65
Total Effective Sentence: 4 years, 6 months (concurrent with sentence presently being served)[18]				
Resentenced for original charges subject to community correction order ('CCO'):[19] 4 months aggregate (2 months to be served cumulatively upon the sentence imposed on 5 February 2018)				
Combined Total Effective Sentence: 4 years, 8 months				
Non-Parole Period: 3 years				
Pre-Sentence Detention declaration: Nil				
6AAA Statement: 6 years, 9 months, with non-parole period of 4 years, 9 months				

2 The applicant committed the offending the subject of charges 1–3 jointly with a co-offender, Joshua Renouf. Renouf pleaded guilty to the charges set out in the table below and, on 16 August 2018, a different County Court judge sentenced him as set out in that table:[20]

Charge	**Offence**	**Maximum**	**Sentence**	**Cumulation**
1	Burglary	10 years	Aggregate 7 days and a CCO of 2 years	Base
3	Theft of a firearm	15 years		
2	Theft	10 years	Aggregate 7 days	Nil
4	Handle stolen goods[21]	15 years		
5	Obtain financial advantage by deception[22]	10 years		
Total Effective Sentence: 7 days and a CCO of 2 years				
Pre-Sentence Detention declaration: 7 days				

3 The applicant applied for leave to appeal against sentence on the sole ground of manifest excess. On 6 August 2018, Maxwell P refused that application. Following the sentencing of Renouf on 16 August 2018, the applicant elected to renew his

16 *Crimes Act* s 195.

17 *Drugs, Poisons and Controlled Substances Act 1981* s 75.

18 At the time the applicant was sentenced on 5 February 2018, he was serving a sentence of 10 months' imprisonment that had been imposed on 12 September 2017.

19 As discussed at [33] below, in July 2016, the applicant was sentence to a CCO of 12 months for the offences there described. He breached the CCO by committing the current offending. On 5 February 2018, the judge resentenced the applicant for the charges that gave rise to the CCO.

20 *DPP v Renouf* [2018] VCC 1285 ('*Renouf*').

21 *Crimes Act* s 88(1).

22 *Crimes Act* s 82(1).

application pursuant to s 315(2) of the *Criminal Procedure Act 2009*, and sought leave to add a second ground alleging infringement of the parity principle. As the Crown did not oppose the granting of leave to add the new ground, we granted leave.

4 The second ground was in the following terms:

> In all the circumstances:
>
> a the sentence imposed on the applicant for charges 1, 2 and 3 in proceeding CR-17-01860; and
>
> b the sentence imposed on his co-offender Joshua Renouf in proceeding CR-17-02169
>
> gave rise to a justifiable sense of grievance.

5 At the hearing before us, the applicant did not press the manifest excess ground and conceded that if the parity ground did not succeed, the application for leave to appeal would have to be refused. That concession was appropriate.

6 For the reasons that follow, the application for leave to appeal will be refused.

Circumstances of the offending

7 The 41 indictable offences to which the applicant pleaded guilty comprised 15 burglaries, 1 attempted burglary, 15 thefts, 1 attempted theft, 2 thefts of a firearm, 2 offences of possessing a firearm while a prohibited person, 2 offences of dangerous driving while being pursued by police, 1 offence of obtaining property by deception and 2 offences of possessing a drug of dependence. The 19 summary charges to which he pleaded guilty comprised 8 offences of going equipped to steal, 5 offences of driving while disqualified, 2 offences of dealing with property suspected of being the proceeds of crime, 1 offence of committing an indictable offence while on bail, 1 offence of contravening a conduct condition of bail, 1 offence of using an unregistered vehicle on a highway and 1 offence of using a drug of dependence.

8 Due to the large number of offences to which the applicant pleaded guilty, the summary of prosecution opening that was the agreed factual basis for the plea is

very lengthy. As the parity ground is directed to charges 1–3 only, we will set out the circumstances of the offending the subject of those charges and charge 4 in detail, but will summarise more generally the circumstances relating to the other charges.

Charges 1–4

9 Sometime in the evening of 12 April and the early morning of 13 April 2017, the applicant and Renouf attended the premises of Renouf's former employer, J&J Baldi Concreting, in Shepparton. The offenders entered the premises by slipping through a gap in the front gate and using a jemmy bar to open the door of one of the workshops (charge 1, burglary, for both offenders).

10 In the first workshop, the offenders located a set of keys that opened a second workshop. In the second workshop, they used a jemmy bar to open two metal gun safes from which they removed 11 firearms (charge 3, theft of a firearm, for both offenders; charge 4, prohibited person possessing a firearm, for the applicant).

11 The offenders then entered a third workshop from which they removed a laser cutter. A concrete polisher was also taken from one of the workshops. They loaded those items and the 11 firearms into a white Great Wall utility parked at the premises and then drove away in the utility (charge 2, theft, for both offenders).

12 On 14 April 2017, an unknown person contacted John Baldi, the owner of J&J Baldi Concreting, by telephone. That person said that he had purchased the 11 firearms and offered to sell them back to Mr Baldi. Mr Baldi attended an undisclosed location and purchased the firearms for $3,300.

13 The applicant was on bail at the time of this offending and was in contravention of his bail conditions (summary offences 6 and 7).

Other charges

14 The offending the subject of the other charges took place between 5 May and 16 June

2017. Most of the offences were committed in the six days from 8 June until 14 June 2017.

15 The burglaries and thefts were committed mainly on rural homes and small businesses in Shepparton and surrounding areas. The applicant stole valuable tools, cars, cash and electrical equipment. In one house burglary, he stole a valuable coin collection and jewellery, including an engagement ring and a wedding ring. The value of those items was estimated to be $10,675.

16 In addition to the 11 stolen firearms that are the subject of charge 3, on 8 June 2017 the applicant stole two firearms from a locked gun safe in a private residence in Caniambo (charge 16). Those firearms remain at large.

17 The burglary the subject of charge 13 was committed when the applicant and an unknown co-offender entered a workshop of a former employer of the applicant.

18 In the course of the applicant's crime spree, he was seen from time to time by police in stolen or borrowed vehicles. When he was pursued, he drove dangerously to avoid apprehension. On one occasion when he had a passenger, he narrowly avoided a head-on collision with a truck.

19 At the time of the offending, the applicant was serving two CCOs for the offences discussed at [33]–[34] below.

20 The applicant was arrested on 16 June 2017. In his record of interview, he made full admissions about his offending and expressed remorse. However, he refused to identify his co-offender in relation to charges 1–3, even after the police informed him that they had arrested Renouf for those offences and that Renouf had admitted his involvement and named the applicant as his co-offender. The applicant also refused to identify other co-offenders with whom he had committed some of the other offences, including the offence the subject of charge 13.

Personal circumstances of the applicant

21 The applicant was 21 years of age when he committed the offences and 22 when he was sentenced. He has a younger sister and several step-siblings.

22 The applicant had a particularly difficult upbringing.[23] Things got no easier for him as an adult. As a child, his father was occasionally violent towards him and other members of his family. The applicant's mother was a drug addict, suffered from a mental illness and served several prison sentences for dishonesty offences. His younger sister also suffers from mental illness. The applicant was diagnosed with attention deficit hyperactivity disorder ('ADHD') when he was 4 years old but his mother refused to give him the medication that was prescribed to manage the condition.

23 When the applicant was a primary school student, he returned home from school one day and was shocked to discover that his mother was absent because she had been imprisoned for fraud.

24 The applicant's schooling was characterised by truancy, physical altercations with other students and other disruptive behaviour. He attended Shepparton State High School until he was expelled for threatening a teacher with a cap gun. He also attended an alternative education school, Leaps and Bounds.

25 The applicant's parents separated when he was approximately 12–13 years of age and both re-partnered within a few years.

26 The applicant began drinking alcohol when he was 13 years of age, following his parents' separation. He then experimented with marijuana and 'speed'. When he was 16, he began recreational use of methylamphetamine. That use escalated to a daily habit when he was 17–18, after his mother was incarcerated again.

27 In April 2016, the applicant's maternal uncle died from medical complications secondary to chronic drug use. The applicant was very close to his uncle and his death resulted in a spiralling of the applicant's drug use to manage his grief.

[23] On the plea, the judge commented that the applicant 'wasn't dealt any easy set of cards'. See Transcript of Proceedings (29 January 2018) 34.

28 At the time of the current offending, the applicant was smoking almost 3.5 grams of methylamphetamine daily.

29 The applicant undertook some labouring work, including panel beating, upon leaving school.

30 When he was 17 years old, the applicant commenced a relationship with a 28-year-old woman who had two young children from a previous relationship. She was also a drug user. They lived in a rental property owned by the applicant's father and the applicant took on parenting responsibilities for the children. In January 2017, they were evicted from the property due to failure to pay the rent and the applicant's substance abuse. Their relationship ended at that time. The applicant began to 'couch surf' and live in his car. He has been unemployed since that time.

31 The applicant has a relevant prior criminal history, albeit that it appears only to have commenced in 2015. He began offending to feed his drug habit and to provide for his basic needs.

32 On 22 January 2016, the applicant was convicted of theft from a shop and failing to answer bail and was fined an aggregate of $400.

33 On 11 July 2016 — less than a year before the current offending — the applicant was convicted of 3 charges of theft, 7 charges of theft from a shop, 1 charge of theft of a motor vehicle, 3 charges of going equipped to steal, 2 charges of entering a building with intent to steal, 1 charge of handling stolen goods, 2 charges of dealing with property suspected of being the proceeds of crime, 2 charges of committing an indictable offence while on bail, 1 charge of using methylamphetamine and 1 charge of possessing methylamphetamine. He was sentenced to 6 months' imprisonment and a CCO of 12 months. He successfully appealed to the County Court and, on 21 July 2016, he was resentenced to 3 months' imprisonment and a CCO of 12 months. The CCO included conditions for 'assessment and treatment'. It appears that the assessment and treatment related to drug abuse/dependency and mental health.

34 On 5 December 2016, the applicant was convicted of 1 charge of unlicensed driving, 1 charge of using an unregistered motor vehicle on a highway and 1 charge of refusing to provide a sample of oral fluid. He was sentenced to a CCO of 12 months, which overlapped with the term of the CCO imposed on 21 July 2016.

35 The applicant made some effort to comply with the CCO dated 21 July 2016 until early 2017, after which time the CCO 'completely broke down'.[24]

36 According to a report dated 4 September 2017 by a consultant psychologist, Carla Ferrari, the applicant suffers from a post-traumatic stress disorder, a major depressive disorder and an amphetamine-type stimulant use disorder. The applicant expressed his remorse to Ms Ferrari. She stated that the applicant is motivated to address the unresolved issues which perpetuate his substance abuse, and reform his life. She assessed his risk of reoffending as low, provided that his support system remains in place and he abstains from substance abuse.

37 The applicant continues to enjoy the support of his siblings, mother and maternal grandmother with whom he has a close relationship. A moving character reference from his grandmother was tendered on the plea.

Personal circumstances of Renouf

38 Renouf was 21 years old at the time he was sentenced for the offending the subject of charges 1–3. He has a Koori background.

39 The additional theft charge to which Renouf pleaded guilty involved the theft of a concrete saw from an employer.

40 When Renouf was interviewed by police following his arrest for the current offending, he made full admissions and identified the applicant as his co-offender in respect of charges 1–3.

41 Renouf's criminal history was confined to some Children's Court matters for

[24] Sentencing remarks [19].

fighting.

Sentencing remarks relating to the applicant

42 The judge described burglaries on rural properties and thefts of firearms stored on such properties as 'very serious criminality'.[25] He said that the need for denunciation and deterrence is high, given the danger of unregulated weapons being on the streets.

43 The judge also described the applicant's dangerous driving when pursued by police as 'serious' and said that it must be condemned, as the community needs to be protected from thoughtless and dangerous driving behaviour.[26]

44 In relation to the applicant's overall offending, moral culpability and the link between the offending and the applicant's drug addiction, the judge said the following:

> [The] crime spree was serious offending committed on ordinary hardworking and vulnerable home owners and business owners. The courts must reflect the community's concerns about such crimes. They are corrosive in that ordinary members of the community are made to feel less safe than they should be.
>
> As to [the applicant's] moral culpability, it is plain this outbreak of crime was so … [he] could get what property and cash [he] could to feed [his] drug habit. That is the explanation and an all too familiar one. However it must be plainly understood that [his] drug problem provides no excuse at all.
>
> Indeed [the applicant's] previous offending was also due to drug addiction and the court did what could be done to help [him] by imposing a [CCO] with treatment conditions directed at drug addiction and the underlying mental health problems.
>
> Thus [the applicant] knew what happened when [he] took drugs. [His] own responsibility is to take up opportunities offered so as to avoid the chaotic behaviours such as what occurred in April, May and especially in June 2017.[27]

45 The judge said that he took into account the important sentencing considerations of the applicant's youth and his rehabilitation. He stated that, although paramount

[25] Sentencing remarks [5].

[26] Sentencing remarks [6].

[27] Sentencing remarks [7]–[10].

weight is ordinarily given to these matters, he could not give them such weight in the present case because 'the gravity of [the applicant's] many offences taken with [his] recent and relevant prior history means that rehabilitation must yield to other sentencing purposes of denunciation, punishment and deterrence to [him] and others'.[28]

46 The judge took into account the applicant's guilty plea, cooperation with the police upon his arrest and his remorse. He also took into account the principle of totality.

Sentencing remarks relating to Renouf

47 The judge who sentenced Renouf stated that, because of Renouf's age and lack of prior convictions, a short gaol sentence was 'ample' for the theft, handling stolen goods and obtaining financial advantage by deception charges.[29] As we have already stated, Renouf was sentenced to an aggregate sentence of 7 days' imprisonment, being the time already served, for those charges.

48 In respect of the burglary and theft of a firearm offences that Renouf committed jointly with the applicant, the judge sentenced Renouf to an aggregate sentence of 7 days' imprisonment and a CCO of 2 years. The judge made the following observations in respect of those offences:

> The dangers of having eleven firearms, unregulated firearms, going into a community which is like most other rural communities in this state, [waging] a war with that drug ice, is a very very dangerous proposition.
>
> General deterrence in this situation [has] to loom very large. It is only [Renouf's] age that saves [him] in this circumstance. Specific deterrence to [him], I think seven days ought to be enough, but I have told [him] what I am going to do if [he messes] this up. There also has to be denunciation and appropriate punishment. As I have said, parity is really not an issue because even though there [were] similar ages with [Renouf] and the co-accused, he was sentenced for far far more offending and did have that extended criminal history.[30]

28 Sentencing remarks [12].

29 *Renouf* [2018] VCC 1285 [4].

30 *Renouf* [2018] VCC 1285 [4]–[5].

Parties' submissions on parity ground

49 The applicant submitted that, in circumstances where his involvement in the offending the subject of charges 1–3 was identical to that of Renouf, and they were both youthful offenders who pleaded guilty and cooperated with the police, the disparity in their sentences for those offences gave rise to a legitimate sense of grievance. Indeed, the applicant submitted that Renouf's moral culpability in relation to those charges was graver than his. This was said to be because Renouf had previously worked at J&J Baldi Concreting and was familiar with the location of the firearms, and therefore his offending involved a breach of trust.

50 The applicant conceded that the fact that he had a relevant prior history whereas Renouf did not, and the fact that he was serving a CCO at the time of the current offending, were important differences which warranted a more severe sentence being imposed on him compared to Renouf. He also conceded that, unlike Renouf, the imposition of a CCO was not a sentencing option that was available in relation to him. This was said to be because of his prior history, his breach of the existing CCO and the magnitude of the seriousness of the totality of his current offending.

51 Notwithstanding these concessions, the applicant submitted that the disparity between his aggregate sentence of 2 years and 4 months' imprisonment for charges 1–3 and Renouf's aggregate sentence of 7 days' imprisonment and a CCO of 2 years was so great that it infringed the parity principle. He contended that this was particularly so having regard to the fact that, unlike Renouf, the applicant was able to call in aid a large number of matters in mitigation, such as his difficult childhood, ADHD, mental illnesses and homelessness.

52 The Crown submitted that the disparity in the sentences did not infringe the parity principle. This was said to be because of the following factors:

(a) The aggregate sentence of 2 years and 4 months' imprisonment was imposed on the applicant in respect of charges 1–4 whereas the aggregate sentence of 7 days' imprisonment and a CCO of 2 years was imposed on Renouf only in respect of charges 1–3.

(b) Unlike Renouf, the applicant had a significant criminal history and was serving a CCO at the time of the current offending.

(c) As conceded by the applicant, unlike Renouf, a CCO was not a sentencing option that was open to the judge in sentencing the applicant for the current offending.

(d) Renouf's cooperation with the police was greater than that of the applicant.

(e) The applicant's overall offending was grave and required that rehabilitation give way to specific deterrence and denunciation.

53 The Crown contended that the combined force of the above factors meant that there was no room for the parity principle to operate because comparing the sentences imposed on the applicant and Renouf would be akin to comparing apples with oranges.

Decision on parity ground

54 The applicant and Renouf were co-offenders in relation to the offending the subject of charges 1–3. They were 22 and 21 years old respectively at the time that they were sentenced, and both pleaded guilty. In these circumstances, the parity principle required the judge to impose the same sentence on them for the offending the subject of charges 1–3 unless there were distinguishing features in their respective roles in that offending, or in any other relevant sentencing considerations, which warranted differential sentences.

55 The question for this Court is whether, having regard to such distinguishing features as existed, the significant sentencing disparity was reasonably open in all the circumstances. If that disparity cannot be supported by the distinguishing features, it would give rise to an objectively justifiable sense of grievance on the part of the applicant.[31]

[31] *Postiglione v The Queen* (1997) 189 CLR 295, 301; *R v Wolfe* [2008] VSCA 284 [9]; *Hilder v The Queen* [2011] VSCA 192 [19]; *DPP (Cth) v KMD* (2015) 254 A Crim R 244, 268–9 [107]; *Mitchell v The Queen* [2018] VSCA 158 [46]–[48]; *Hope v The Queen* [2018] VSCA 230 [89]–[91].

56 In the present case, there were a large number of important differences between the applicant and Renouf which more than justified the disparity in their sentences.

57 First, as submitted by the Crown, the offences for which the applicant and Renouf were sentenced were not identical. The aggregate sentence of 2 years and 4 months' imprisonment imposed on the applicant encompasses charges 1–4 whereas the aggregate sentence of 7 days' imprisonment and a CCO of 2 years imposed on Renouf encompasses only charges 1–3. Charge 4, which did not apply to Renouf, was for the offence of possessing a firearm while a prohibited person. That is a serious offence which carries a maximum penalty of 10 years' imprisonment.

58 Secondly, although the offending the subject of charges 1–3 is common to the applicant and Renouf, that offending cannot be considered in isolation. Unlike Renouf, whose offending was confined to those charges and two additional charges, the applicant's offending heralded a devastating 9-week crime spree which wreaked havoc in the Shepparton area. The applicant's moral culpability with respect to the offences now under consideration was greater than that of Renouf.

59 Thirdly, Renouf cooperated with the police to a greater extent than the applicant. Renouf named the applicant as his co-offender but the applicant refused to identify Renouf as his co-offender or to comment on Renouf's version of events. Renouf's higher degree of cooperation indicated that he had accepted responsibility for the offending and was remorseful to a greater degree than the applicant.

60 Fourthly, the applicant had an extensive criminal history for dishonesty offences whereas Renouf did not have a relevant criminal history. Moreover, the applicant was serving two CCOs at the time of the current offending. One of those CCOs included conditions directed at assisting the applicant to overcome the underlying causes of his previous offending and support his rehabilitation. The applicant's criminal history further illuminated his moral culpability relative to that of Renouf; though not, to be clear, the gravity of the offending in respect of which sentence was

to be imposed.[32] The applicant's criminal history and failure to take advantage of the opportunities offered by the CCOs imposed on him to desist from further offending meant that, while his rehabilitation remained an important sentencing consideration due to his youth, greater weight had to be given to denunciation, just punishment, specific deterrence and protection of the community in his case compared to that of Renouf.

61 Fifthly, the judge found that the applicant 'knew what happened when [he] took drugs', that is, he committed burglaries and thefts in order to 'feed [his] drug habit'.[33] A similar finding was not made in respect of Renouf. This finding in relation to the applicant also illuminated his moral culpability relative to that of Renouf.

62 Sixthly, by virtue of the first five matters to which we have referred, the only sentencing disposition that was open in respect of the applicant for charges 1–4 was a significant custodial sentence. However, that was not the case in relation to Renouf. The absence of a relevant criminal history and the more limited scope of Renouf's offending meant that rehabilitation remained the pre-eminent sentencing consideration in his case. Unlike in the applicant's case, a combination sentence consisting of a CCO and a custodial sentence equivalent to time served was the most appropriate sentencing disposition for Renouf.

63 It follows that the applicant's circumstances were so different from those of Renouf that the imposition of similar sentences in respect of charges 1–3 was not reasonably open. Put simply, the stark differences in the circumstances of the two offenders meant that the application of the parity principle did not require that the applicant be sentenced to a lesser sentence than that imposed on him by the judge for those charges.

64 We accept that the applicant was able to call in aid mitigating factors that were not available to Renouf. The most significant of those factors were the applicant's

[32] See the recent discussion on the relevance of a prior criminal history to the exercise of the sentencing discretion in *Dirbass v The Queen* [2018] VSCA 272 [48]–[55].

[33] Sentencing remarks [8], [10].

disadvantaged upbringing, homelessness, untreated ADHD and mental illnesses. We also accept that there was an element of breach of trust in Renouf's offending in relation to charges 1–3 which did not apply to the applicant. However, these considerations were outweighed by the combined force of the factors to which we have already referred and are insufficient to impugn the disparity in the sentences imposed on the applicant and Renouf for those charges.

65 It follows that the parity ground must be rejected.

Conclusion

66 As we have already stated, the applicant did not press the manifest excess ground and correctly conceded that, if the parity ground did not succeed, the application for leave to appeal against sentence would have to be refused. As we have rejected the parity ground, the application will be refused.

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